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Howard G. Bruss, Esq.		MAI, TRI M		
Owens-Illinois, Inc.		ART UNIT		
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/901,315
Filing Date: July 09, 2001
Appellant(s): ZHANG ET AL.

Thomas Mehan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/14/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 11-16, and 20-21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

D250,392	Leary et al.	11/78
D308,167	Holmes	5/1990
4,671,412	Gatten	6/1987
5,472,105	Krishnakumar et al.	12/1995
5,688,572	Slat et al.	11/1997
5,279,433	Krishnakumar et al.	1/1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 11-12, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes (D308, 167) in view of Krishnakumar (5472105) and further in view of Slat et al. Holmes teaches a container having a body portion with a circular cross section, a neck portion, and a pair of axially extending gripping panels at the neck portion. Holmes meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container.

Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 ¼ in.

"may be particularly useful with larger diameter containers, i.e., 4.0 inches and larger in diameter." (col. 5, ln. 50)

"FIG. 1 shows a particular embodiment...a diameter C of about 115 mm." (col. 3, ln. 44) Note: 115mm = 4.5 inches.

Thus, Krishnakumar teaches that the diameter can be between 4 - 4.5 in.

With respect to the space between the gripping panel being less than 2-1/2 in, i.e., Fig. 3 show each side of the container has an inward dimension of d_4 :

" d_4 is on the order of 0.50 to 0.90 inches." (col. 5, ln. 26).

Thus, the space between the grip can be = diameter of the bottle - 2 sides x .90 inches = 4.5 inches - 2(.90) = 2.7 inches. Please note this is the measurement at the longest distance between the two gripping portions in Fig. 3 of the largest possible bottle (4.5 inches diameter as set forth above). By approximation shown in Fig. 3, the grip would have a distance less than 2.5 inches generally at mid portion and at the distance at two nearest points. Even so, since Krishnakumar teaches that the diameter can be between 4 - 4.5 inches, using a bottle at 4.25 inches diameter, S is then obtained at distance less than 2.5 inches. In this case, the space S is about 2.45 inches.

Thus, it would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and the grip portions at the neck portion being no more than 2-1/2 in. in Holmes as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the innermost layer being made from PET, the container in Krishnakumar can be made from various layers plastic materials including PET.

"The container may be either a monolayer, or a multilayer construction, including layers of an oxygen barrier material such as ethylene vinyl alcohol or polyvinylidene chloride, and may include a layer of reprocessed scrap material, such as post-consumer or recycled PET." (col. 6, lines 19-23).

Furthermore, Slat teaches that it is known in the art to make the innermost layer 20 from PET (shown in Fig. 1A-1C):

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"inner layer 20 is preferably formed from polyethylene terephthalate (PET)" (col. 4, ln. 53)

It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Regarding claim 12, Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz.

"FIG. 1 shows a particular embodiment of the present invention--a **64-ounce** polyethylene terephthalate (PET) beverage bottle." (col. 3, ln. 40-41)

It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of content for the consumer.

2. Claims 11, 12, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Gatten (4671412) in view of Krishnakumar '105, and further in view of Slat et al. Similar to the Holmes rejection above, Gatten teaches a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Gatten meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container.

Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and the space between the gripping panel being less than 2-1/2 in as set forth above. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Gatten as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

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With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

With respect to the gripping panels extending axially, portions 25, 55, 65 (Figs. 2, 6, 9) are axially extending.

Regarding claim 13, please note the concaved portions 43 in Fig. 5.

Regarding claims 15-16, it would have been obvious to one of ordinary skill in the art to provide the dimensions as set forth in claims 15 and 16 to provide the desired proportion of the container, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

3. Claims 11, 12, 13-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Leary et al. (D250392) in view of Krishnakumar '105, and further in view of Slat et al. Similar to the Holmes and Leary rejections as set forth above, Leary teaches a container with a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Leary meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Leary as taught by

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Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the gripping panels extending parallel to one another, it would have been obvious to one of ordinary skill in the art to have the two gripping panels extending parallel to one another to enable one to grasp the container easily.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Regarding claims 15-16, it would have been obvious to one of ordinary skill in the art to provide the dimensions as set forth in claims 15 and 16 to provide the desired proportion of the container, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see *In re Rose*, 105 USPQ 237 (CCPA 1955), and *In re Tanczyn*, 44 CCPA 704, 766, 241)

Regarding claim 20, note the non-circular cross-section in Fig. 6 and the two widths as set forth in the claim.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the rejections of anyone of Holmes, Gatten, and Leary rejections, as set forth above in paragraphs 1-3, and further in view of Krishnakumar (5279433). It would have been obvious to one of ordinary skill in the art to provide a plurality of inwardly projection panels in anyone of Holmes, Gatten, and Leary rejections as taught by Krishnakumar (Figs. 1-8) to enable one to hot fill products easily.

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(11) Response to Argument***Response to Arguments***

Applicant's arguments including with The Zang Declaration been fully considered but they are not persuasive.

The Zang Declaration asserts that it is not obvious to use PET-based cylindrical preform for unduly large container because it would lead to unacceptable appearance. It is noted that the container of Krishnakumar is a large container, as set forth above. Krishnakumar's container is made from a preform 5 (see figure 4), (col. 3, line 22), (col.)3, line 47.

"The bottle 10 is blow molded from an injection **molded preform 5**, shown in phantom in FIG. 4, having an upper threaded neck finish 12 and a lower tube portion 6. During blowing, the preform is expanded and assumes the shape of an interior molding surface (not shown) to form a substantially transparent, biaxially-oriented bottle." (col. 3, lines 47-52).

Furthermore, the container can be made from various layers plastic materials including PET.

"The container may be either a monolayer, or a **multilayer construction**, including layers of an oxygen barrier material such as ethylene vinyl alcohol or polyvinylidene chloride, and may include a layer of reprocessed scrap material, such as post-consumer or **recycled PET**." (col. 6, lines 19-23).

As set forth above, Krishnakumar teaches a large container can be made from a preform with PET layer.

Furthermore, Slat teaches that it is known in the art to make the innermost layer 20 from PET (shown in Fig. 1A-1C):

"inner layer 20 is preferably formed from polyethylene **terephthalate (PET)**" (col. 4, ln. 53)

With respect to Space between the gripping panel, Krishnakumar teaches that it is known in the art to provide a gripping with a distance less than 2.25 inches. It would have been obvious

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to one of ordinary skill in the art the grip portions at the neck portion being no more than 2-1/2 in. in Holmes as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container. If the gripping distance at the body being less than 2 ½ inches, one of ordinary skill in the art would know to provide a gripping distance at the neck portion less than 2 ½ inches. Furthermore, the diameter at the neck portion is less than the diameter at the body portion would make this obvious.


With respect to claim 21, as set forth above, it would have been obvious to one of ordinary skill in the art to provide a plurality of inwardly projection panels in Gatten as taught by Krishnakumar (Figs. 1-8) to enable one to hot fill products easily. It is noted that vacuum panels are common features in the art of bottle (class 215, subclass 381). It would have been obvious to one of ordinary skill in the art to provide a plurality of inwardly projection panels in the Holmes rejection as taught by Krishnakumar (Figs. 1-8) to enable one to hot fill products easily.

With respect to Gatten and Leary combination, applicant rehashes most arguments as set forth above, applicant fails to address the limitations in Krishnakumar et al. and Slat et al. references as applied above. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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For the above reasons, it is believed that the rejections should be sustained.



Respectfully submitted,

Tri M. Mai 
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August 9, 2004

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